

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

JAMES LOGAN SPIVEY

PLAINTIFF

v.

Civil No. 2:17-CV-02212

DR. JOHNATHAN WHITE

DEFENDANT

**ORDER**

Plaintiff proceeds in this matter *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's failure to obey a Court Order and to prosecute this case.

**I. BACKGROUND**

Plaintiff filed his Complaint on November 13, 2017. (ECF No. 1). In the Court's Order that granted Plaintiff *in forma pauperis* status, Plaintiff was advised that he must inform the Court of any address change within thirty days or his case would be dismissed. (ECF No. 6).

Defendant White filed his Motion for Summary Judgment on May 14, 2018. (ECF No. 15). On May 15, 2018, the Court entered an Order directing Plaintiff to file a Response to the Motion by June 5, 2018. (ECF No. 18). This Order was returned as undeliverable on May 30, 2018. To date, Plaintiff has not provided a new address to the Court. Plaintiff has not communicated with the Court since February 9, 2018. (ECF No. 14).

**II. LEGAL STANDARD**

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The local rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. .

. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case if a plaintiff fails to prosecute or fails to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with *any* court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

### **III. ANALYSIS**

Plaintiff has failed to keep the Court apprised of his current address as required by Local Rule 5.5(c)(2). Plaintiff has failed to comply with a Court Order. Plaintiff has failed to prosecute this matter. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), Plaintiff’s Complaint should be dismissed without prejudice for failure to comply with the Court’s Local Rules and Orders and failure to prosecute this case.

For these reasons, IT IS ORDERED that Plaintiff’s claims are DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 24th day of July 2018.

P. K. Holmes, III

P. K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE